IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT PETITION NO : 2937 of 2001

Between:

M/s Sangeeta Plastic Industries,

Situated at H.No.3-5-278, Vittalwadi,

Hyderabad, rep. by its Propretrix

Smt. Jyothi Talwar W/o Sudhir Talwar.

..... PETITIONER

AND

1. A.P. Pollution Control Board, 2nd floor,

HUDA Complex, Maitrivanam, S.R.Nagar,

Hyderabad, rep. by its Member Secretary.

2. The State Government of A.P., EFS & T

Department, Govt. of A.P. Secretariat,

Hyderabad, rep. by its Secretary.

3. Kumudini Shivaji Rao Sarvi,

W/o Dr. Shivaji Rao Sarvi, H.No.3/5/277 &

277/A, Vittalwadi, Narayanaguda, Hyderabad.

(R.3 is impleaded as per Court order dated

04.12.2003 in WPMP.NO.30452 of 2003).

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction in the nature of Certiorari or otherwise declaring the impugned proceedings in Annexure-I i.e., No.21608/PCB/TF-HYD/2000-1831 dated 14.12.2000 of the A.P. Pollution Control Board, Hyderabad, as confirmed by the judgment of the Appellate Authority dated 3.2.2001 under the Air (Prevention and Control of Pollution) Act and the Water (Prevention and Control of Pollution) Act, Hyderabad, in Appeal No.7 of 2000 (Annexure II) as illegal, arbitrary and ultra vires the powers of the respondents under the said Acts and consequently declare the same as unenforceable.

Counsel for the Petitioner : MR.VILAS V.AFZULPURKAR

Counsel for the respondent No.1: MR. S.V. BHATT.

Counsel for the Respondent No.2: GP FOR IRRIGATION AND COMMAND AREA DEVELOPMENT.

Counsel for the respondent No.3: MR. T.P. ACHARYA.

The Court made the following :

ORAL ORDER:

(per Hon'ble The Chief Justice)

.....

1 . On 14.12.2000 closure order was issued by the A.P. Pollution Control Board against the petitioner in exercise of its power under Air (Prevention and Control of Pollution) Act, which was challenged by the petitioner by preferring Appeal No.7 of 2000 before the Appellate Authority constituted under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. On dismissal of appeal, this writ petition was filed questioning the legality and validity of the orders on the ground that on admitted facts, it was not permissible for the respondent – Board to have exercised its jurisdiction to order closure of the industry or establishing of the industry.

2. We have heard counsel for the parties and gone through the record. Some vital aspects as regards the permission of the petitioner to shift its industry on the ground that it is causing severe smell nuisance to the residents of Vittalwadi due to operation of industry in the residential area, which is

causing vomiting sensation and health hazards to the residents, are the subject-matter in the present writ petition on which there seems to have been no definite finding recorded even by the Board or by the Appellate Authority. Question of jurisdiction being a matter which deserves to be dealt with on the given facts of the case, and since these aspects were lost sight of both by the Appellate Authority and by the Board, we have no option except to allow the writ petition and set aside the impugned orders with direction to the respondent – Board to hear and decide the matter afresh in accordance with law after affording opportunity to the petitioner of being hard and making its submissions. Ordered accordingly. No costs.

_____

DEVINDER GUPTA. C.J.,

_____

M. NARAYANA REDDY. J.,

Dated: 16.12.2004.

VRK.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, The Chief Justice on this Thursday, the sixteenth day of December, Two Thousand and Four.

To

1. The Member Secretary, A.P. Pollution Control Board, 2nd floor,
   HUDA Complex, Maitrivanam, S.R.Nagar,
   Hyderabad.
2. The Secretary to Government, EFS & T
   Department, Secretariat,
   Hyderabad.
3. Two CCs to G.P. for Irrigation, High Court Buildings, Hyderabad (OUT).
4. Two CD copies.
5. Appellate Authority constituted under Water (Prevention and Control of Pollution) Act, 1981, 208-HUDA Complex, S.R. Nagar, Hyderabad.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE M. NARAYANA REDDY.

W.P.NO. 2937 OF 2001.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 16.12.2004.